683 other, the debate would continue for two days and three
[692] nights without food or sleep."[59] However, in most cases, the chief or an elder was present to render judgment or to propose reconciliation. Judgment was based on precedent and it seems that the various trials and tortures mentioned above served chiefly to enable elders to reach a decision. Trials were open to the public and unless the elders sitting in judgment reached a unanimous decision no verdict could be handed
696 down.[60] Execution of punishment was not necessarily carried out by the chief but was left up to the group and only when a case concerned the entire village or could not be settled by the group was the chief called upon for his decision. There were no set codes of punishment nor were there specific penalties meted out for specific crimes, instead retribution was imposed
684 according to precedent and custom. For example, in regard to the penalty for adultery, that crime of which
184 we find the most frequent mention in the records, the *Tōyū Zakki* [Miscellany of a Trip to the East]
562 says, "In rare occasions where there is misconduct the man is not punished but the woman is beaten to death with a club and cast into sea." While there is some doubt that this was the standard punishment we find in a report by Nagata Hosei that adulterers were wrapped in a straw mat and thrown off a cliff into the sea,[61] which is a confirmation of the existence of the death penalty. The *Ezo Zakki Yakusetsu* remarks, "When a married woman committed adultery her hair was cut off and she was made a nun," while the *Ezo Dan Hikki* confirms the removal of the hair as punish-
684 ment. "In general the law of the Ainu was not limited to the wife. If a man outraged a woman he was punished by having his hair torn out." Other cases seem to have been settled by fines. The *Hokkai Zuihitsu* [Notes on the Northern Sea Area] mention this: "When there was misconduct treasure was ordered to be given to the other party as a token of apology and as atonement for the crime." And in the *Igen Zokuwa:* "It was a serious matter when a married woman made illicit love. It resulted in atonement and the submitting of a great amount of treasure." From the *Watarishima Hikki:* "When adultery was exposed, the culprits were punished by law. However, at times, there would be an arbitration and the parties would be reconciled with the payment of atonement." According to Batchelor, cases were sometimes settled by *Ukaru* which will be discussed later.[62] The *Hokuto Sanjin Monogatari* [Hokuto Sanjin's Story] notes: "It is seldom that a woman will commit adultery. However, if it happens and becomes known to the husband he immediately cuts off his wife's nose. During my sojourn in that country I have seen only two or three

[59] *Tokachi Shū Ryakusetsu.*
[60] *The Ainu and their folklore*, 237.
[61] Nagata Hosei, Ainu no shikei (Death penalty of the Ainu), *Keirin* 7: 28.
[62] *The Ainu and their folklore*, 241.

[P. 20(B)]

684 people without their noses." This cutting off the nose of an adulterer or adulteress is called *Etorasuke* [Etumesu?—to cut off the nose] and was in vogue until recently. We find then that punishment ranged from atonement made through property settlement to such corporal punishment as *Ukaru* and included such penalties as the loss of honor through loss of the hair or the nose. There were other penalties for minor offenses of which the *Watarishima Hikki* speaks, "As for thieves, the chief kept them tied in his house." In addition there were lashing and hanging the culprit by his hair from a beam. More serious offenses were punished by the removal of some part of the body as an ear or a finger and exile was also a punishment. This latter could be serious enough to endanger the life of the victim if the village were itself isolated either socially or geographically. Exile was a frequent judgment.[63] According to the *Hokkai Zuihitsu*, "If someone commits a crime he is driven away from the village."

681 There seems to be no doubt that the death penalty was assessed for crime but since, according to their religious views, death in itself was not necessarily a punishment, it was executed in a merciless manner designed to make the accused suffer as much as possible before dying. For example, the eyes could be pierced by needles and the victim buried alive[64] or the tendons of the legs cut and the criminal banished to the wastelands.[65] Death was of course the outcome of these actions but was not in itself the objective of the actions taken.

Compensation was frequently called for. It was called *Tsugunai* [*Tsugunau*—to compensate] as in Japanese or sometimes *Ashinpe*. Hayashi Kingo interprets *Tsugunai* as "compensation," "atonement," or "arbitration charge," and *Ashinpe* as a minor fine,[66] but there is really no clear distinction.

[439] Merchandise used for foreign exchange such as utensils, weapons, and swords were used for *Ashinpe*. *Ashin* is "new" and *pe* is "thing" and referred to things obtained through trade with foreigners. The scope of *Ashinpe* was very wide, it being imposed in practically all offenses. The fact that most crimes were settled by the offering of *Ashinpe* is seen in *Tōyū Ki* [Journey to the East] which says: "No matter what the crime may be if wealth is offered a life is saved from further danger," and that the other and more severe penalties were imposed only when the accused had no wealth to offer is seen in the *Ezoshima Ki*, "The guilty was never sentenced to death, instead a fine would be imposed. If unable to pay the fine his beard was pulled out and he was set free." In the *Tsugaru Kibun*: "If one has committed a crime but has no treasure to offer, his life was taken." The payment of atonement came not only

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[63] *Ibid.*, 240–241.
[64] *Kyokuboku no bessekai*, 48.
[65] *The Ainu and their folklore*, 241–242.
[66] Hayashi Kingo, Ainu no genshi shakai (Primitive society of the Ainu), *Dorumin* 14 (6).

A F *648 *175 577 661

was forbidden to mainland women. The *Kozukai* Shimochi of Akkeshi says:

> Among the Japanese coming to Kunashiri island were some who brought Ezo women and treated them as wives while others committed adultery with the wives and mistresses of the chiefs and Utare. When the Ezo complained, they would become unreasonable and even demand *Tsugunai*. Therefore, nothing was done about this misbehaviour.

A F [584] [579]

There are also incidents of adultery and rape noted in Menashi. After the 1789 incident, when many rebellious natives were questioned, it became apparent that rape and adultery had played an important part in creating the rebellion.[70] Kimura Kenji who wrote his *Hokkō Nikki* [Journal of a trip to the North] during a journey in 1792 describes this situation.

> Sailors on vessels going to Ezo often commit adultery with Ezo women. When the woman told this to her husband he would go to the vessel, seek out the guilty party and demand *Tsugunai*, whereupon small amounts of tobacco would be given to him. When adultery was to be committed for the first time the Japanese would smear his face with charcoal and, closing his eyes, pretend to be blind so that the Ezo would not recognize him later with his face washed and eyes open. However, the Ezo were used to such tactics and were not deceived.

The above shows that such misconduct was carried on as a daily affair.

A [184]

Many examples have been given for the Kunashiri and Menashi districts. This is because of the material available from these districts and does not mean that this situation did not exist in other parts of the island.

A F [682]

Among the reasons given by the Ezo for the 1789 incident are: if Ezo refused to work they would be poisoned and Japanese would take over their village,[71] or they would be squeezed to death with the oil cake press or boiled to death in a pot,[72] or needles would be set in the floor of a storehouse and the Ezo would be swung over the floor on a hanging platform on which they would all be obliged to get drunk whereupon the platform would be removed and they would be plunged to death.[73] These were all childish threats made by the

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[70] Statements by Ezo in Kunashiri and Menashi in the *Kansei Ezo Ran*. . . .

A F [466]

[71] "When the Ezo laborers showed little enthusiasm for their work, the leading Ezo would be put to death by mixing poison with their food, and new foremen, who the officials thought would be more useful, would be appointed. If orders were neglected, all Ezo were threatened with death by poison after which town halls would be erected and the area turned into a Japanese town by bringing in Japanese from Edo and business would be carried out in their style." (Statement by Shimochi).

[72] "Japanese businessmen making oilcake told the Ezo employed by them to gather firewood and to obey all orders and if they refused to work then all the Ezo, men and women alike, would be squeezed to death with the oil." (Statement by Ezo in Menashi.)

[73] "Since last year three large pots have been set up at different places and the Ezo have been told that each pot was for cooking men, women, and children to death. For a time nothing happened but one day an Ezo women with a child on her back was seized by the Japanese workers and put into a pot. Be-

2: Batchelor M-5 (1877-1924) 1927
AB6 Ainu AB6

asserted that they traded with the races living in Eastern Siberia, and with the Kurile and Aleutian Islands and with Kamschatka. They also did much trade by barter with Matsumai. Chief Penri informed me that his ancestors traded with Manchuria. As proof of this he showed me a string of Manchurian cash, the brass bowl of a tobacco pipe, and some brass rings with which the Saghalien Ainu women decorated their belts.

The Ainu community had various methods of punishing offenders, which were regulated by the different misdemeanours committed and the dispositions of the judges and people. They never appear to have favoured the death penalty, since they considered death no punishment at all. Infliction of pain or disgrace only did they consider worthy of the name of punishment, and the more severe the pain the greater the punishment. Tying up with cords and beating was the most common method of punishing offenders, though this was superadded to other kinds in some cases. The mad were sometimes treated in this way.

For breaking into a granary a very sound beating was administered for the first offence, and this was a great disgrace. For the second, sometimes the tip of the nose or the lobes of the ears were cut off and the offender was driven out of the village and boycotted. For breaking the seventh commandment, it used to be the custom to impose fines, or to tie up the hands of the male offender behind his back and then hang him up by the hair of his head with his toes just touching the ground, and give him a whipping. The female was generally allowed to go free in disgrace, though sometimes she came in for a flogging. Single people were generally made to marry.

For murder it was customary to cut the tendons of the feet, thus maiming the culprit for life. The tendons were severed close to the heels. This was a

4: Landor T-5 (ca. 1890) 1893 AB6 Ainu AB6

everything, whether she is right or wrong; she is occasionally beaten; she never takes active part in any of her husband's Bacchanalian revels; but though she leads a sad kind of life, a life of hard work and no pleasure, she does not seem to be any the worse for it. There are wives, of course, who, as in other countries, give a "pretty rough time" to their husbands; but in the Ainu country these are certainly the exception. As there is no ceremony of marriage, there is naturally no "divorce;" but if an Ainu gets sick of his wife, all he has to do is to leave her and go elsewhere, or else to banish her from his hut. This, however, very seldom happens, for that rare creature the henpecked Ainu husband is willing to put up with a lot; and though brave enough to encounter single-handed a bear, the hairy man is by no means valiant enough to face his wife's temper; while, for all that she is practically a slave, and personally an inferior, is sometimes in Ainuland, as everywhere else, the strongest factor in the domestic sum.

As long as the wife does her duty well as a "beast of burden," little more is required from her. Her morals, as far as I could make out, are not well looked after. Adultery is not considered a crime. I do not mean by this that adultery is practised on principle, for it is not so: there is no reason whatever why it should be, for each man has his own wife or wives; but if adultery were practised by any members of a community, what we consider a dreadful crime would be regarded as a mere "joke" among the hairy people. The husband, like any other animal, dumb or not, would naturally resent the intrusion, but the community would in no way interfere, or punish the offender. A girl is considered fit to be married when she is about sixteen years of age; a man about twenty, or as soon as the body is fully developed.

People as a rule marry in the same village. It is but seldom that a girl marries a man or a man a girl of a different village. Villages, as we have seen, are generally composed of only a few houses, and the result of this strict endogamy is, that marriages take place among very near relations. In very small villages of only one or two houses, the father has been known to marry his own daughter, the uncle his own niece, &c. But enough of this. The result of this dreadful state of affairs is, that the race is rapidly dying

7:Munro & Seligman D.E-4.5 (ca. 1900-1942) 1963
AB6 Ainu AB6

leges are shared. Moreover, the name is descriptive, and it is not clear whether the Ainu use it among themselves or merely gave it by way of definition in answer to investigation.

Premarital intercourse was prohibited; if such an offence occurred a conference (*charange*) was held and usually a penalty was imposed, often the confiscation of some family treasures. If there was no infringement of *kut* exogamy the couple were allowed to marry. Munro was told that, in the old days, if a married man seduced an unmarried girl it was considered a crime comparable to murder.

It will be seen that the following regulations, which Munro recorded and the Ainu believe were given to their ancestors with the instructions regarding the making and wearing of the *upshoro-kut*, are not all founded on matrilineal exogamy:

1. Kut exogamy in matrilineal descent: Munro did not record that matrilineal exogamy was limited in any particular way, but as he did not find a woman who could trace her descent beyond her great-grandmother, the *kut* prohibition is almost certainly restricted to the *matikir esap utar* described by Mr Sugiura.
2. The levirate, known as *matraie*, 'wife uplifting', was an established custom but is no longer considered obligatory. Mr Sugiura states that marriage with the younger brother's widow was prescribed, but forbidden with the elder brother's widow. Munro states that a widow had the right to live with her eldest son who would be responsible for her maintenance, and that sometimes a special house was built for her.
3. No man might marry two sisters; Munro was told that sisters having the same *kut* were regarded as one person. Polygyny was permitted, each wife having a separate house, but owing to the poverty of the Ainu it was not frequent and Munro does not refer to any examples known to him at the time of his investigation.[1]

[1] However, in a footnote on p. 128 Munro refers to the part played by a junior wife at the funeral of her child but makes no mention of her role in ancestor worship, nor whether the usual *kamui* were represented inside and outside the house of such a woman when a separate house was built for her.

Mr Watanabe states that there is no evidence for Ainu having more than one legitimate wife (*machi*) for whom ceremonies of betrothal and of marriage, with the accompanying *kamui nomi*, were performed. But concubines called 'small wife' (*pon machi*) were recognized. In former times the Japanese established trading posts in coastal areas, and Ainu would come to these for a season, where they would fish, hunt and trade with the Japanese. Such men might be accompanied by a 'small wife'. In any case, if a man kept a concubine he made a separate hut for her.